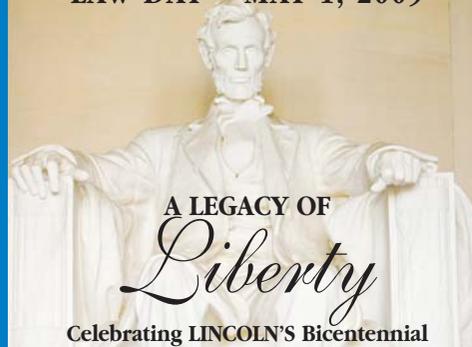


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MAY 2009
Volume 28, Number 5

Official Publication of the

MCBA

MARICOPA COUNTY BAR ASSOCIATION

Get a Cool Deal in the Summertime

OK, it's not summer yet, but the heat is definitely on. That means you can now get a **Cool Deal** from MCBA, whether you're a member or not. Here's how it works:

Recruit a "new attorney" for the MCBA and you get a cool 1 hour of free CLE credit, valid through the end of 2010. For the regular dues amount, the new member gets up to 19 months of MCBA membership. In other words, their membership extends through the end of 2010.

There are few rules:

The **Cool Deal in the Summertime** program defines a "new

See *Get a Cool Deal in the Summertime* page 11

June is X-treme CLE Month at MCBA

With Arizona's MCLE requirement deadline looming, MCBA will be offering near daily CLEs available throughout the month of June.

"Our goal is one per day, though we can't guarantee exactly that at this point," said Laurie Williams, CLE director. "So far our eight or nine

most active sections and divisions have live programs set for 13 of the 20 working days of June, and I'm confident there will be more to come."

X-treme CLE replaces the MCBA's traditional "CLE Film Festival," which each June replayed the most popular programs of the past



Sponsored by the Young Lawyers Divisions of the MCBA and the State Bar of Arizona, "Getting and Keeping a Good Legal Job in a Down Economy" provided advice and insights from a legal employment service, a law firm recruiter and an attorney. From left is Jared Marks, Jared Marks & Associates, legal search and staffing; India Borba, attorney recruiter at Quarles & Brady, LLP; and Andrew Turk, an attorney with Polsinelli Shughart, PC.

year. The Feb. 12 fire at the MCBA building, however, destroyed all the program tapes, necessitating a new approach.

"Frankly, I think live programs have more to offer anyway," said Williams. "Plus, the number of sections involved in this effort ensures that programs will cover topics of interest to almost everyone, including plenty of ethics. And the live format allows for interaction with speakers on the spot, as well as let members network and interact with each other."

All the programs will be recorded and prepared for self-study dissemination, giving members a second shot at CLE credits later. Williams added that once back in the restored building, MCBA will also be web-casting programs.

"This issue of the *Maricopa Lawyer* includes a lot of the June programs, but we'll be producing a special direct-mail publication with a comprehensive listing of June programs, too. Of course, they'll also be on the MCBA website at www.maricopabar.org." ■

CourtWatch

Daniel P. Schaack

'Final Bits' of Opinions Dealing with '94 Notice-of-Claim Statute Amendments

This month, we review the final bits—perhaps—of the spate of opinions dealing with the 1994 amendments to the notice-of-claim statute.

City of Phoenix v. Fields

The notice-of-claim statute requires individual claimants to inform a public entity of the amount that they will accept in settlement of their own claim, even if they plan to file a class action on behalf of numerous similarly situated persons. But when defendant public entities litigate significant issues before asserting the notice-of-claim defense, they lose that defense. So held the Arizona Supreme Court in *City of Phoenix v. Fields*, 201 P.3d 529 (Ariz. 2009).

In April 2002, former and current Head Start workers filed a notice of claim with the City of Phoenix and its Employees' Retirement System Board on behalf of themselves and others similarly situated. They alleged that Head Start workers had been improperly denied various benefits that other city employees were given. Because they were going to seek class certification, they did not include a specific amount for which the city could settle their claims. They filed suit in October 2002, after their notice of claim had been deemed denied.

There ensued litigation over certification of

the plaintiff class. Four and one-half years into the case—after the supreme court issued *Deer Valley Unified School District No. 97 v. Houser*, 214 Ariz. 293, 152 P.3d 490 (2007)—the city and the retirement board moved for summary judgment, asserting the plaintiffs' failure to include a specific settlement amount in their notice of claim. The superior court denied the motion, holding that the specific-sum requirement did not apply to class actions. The defendants filed a special action, and the court of appeals vacated that decision. *City of Phoenix v. Fields (Perez)*, 219 Ariz. 88, 193 P.3d 782 (App. 2008). The supreme court granted the plaintiffs' petition for review.

In a unanimous opinion by Justice Andrew Hurwitz, the high court ruled that class actions are not excepted from the statute's specific-sum requirement. Hurwitz rejected the notion that a prospective class representative must state an amount for which the class action might be settled. The claimants do not yet represent any class when they file their claims, and they cannot settle class claims before class certification.

"Even after certification," Hurwitz noted, "non-representative class members generally

YLD Addresses Domestic Violence

By LaShawn Jenkins

At this time in past years, the YLD Domestic Violence Committee has coordinated a Mother's Day service project at local women's shelters that allowed attorneys to help children at the shelters make arts and crafts for their mothers.

This year, Committee Chair Leslie Satterlee has shifted the committee's focus to enhance



LaShawn Jenkins
YLD President



Leslie Satterlee
YLD Committee Chair

the skills of attorneys in the area of domestic violence, and equip victims of domestic violence with basic legal knowledge to represent themselves in court to protect themselves and their children. Incredible? Hardly.

On May 28, the committee is offering a CLE entitled, "How to Effectively Represent Your Domestic Violence Victim Client – Legal and Practical Aspects for Attorneys." At this CLE, you will learn how to effectively represent a domestic violence victim in any legal action, how domestic violence affects your attorney-client relationship, and how to effectively communicate with your client (from the initial meeting going forward).

The CLE also will include a view from the

See *YLD Domestic Violence Committee Introduces CLE and LAWS Program* page 15

See 'Final Bits' of Opinions page 14

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A Stream of Consciousness



**MCBA
President**
Kevin Quigley

Have you ever found yourself deep in thought, and then tried to trace your steps back to determine how you came to the topic you were pondering?

During the past several years, I have

found myself deep in thought at times, and have suddenly snapped out of the thought process to immediately ask myself how I had come to be thinking about the topic du jour. At these times I go through this exercise.

I found myself thinking the other day about those who have most influenced my career as a lawyer. This was a process of looking at the kind of law I practiced, the firm I practice in, and how I engage in the day-to-day legal practice. I then found myself thinking how fortunate I have been—I have been blessed to have a host of legal mentors.

Several of my mentors were readily identified: my father, my uncle, my brother, several cousins, and another cousin others mistake for my uncle. Some say there are enough lawyers in the family to form our own bar association. I then thought about some of the lawyers and judges I worked with over the past 15 years. Again, I felt very fortunate.

But then I thought, if such resources are not readily available, where does a new

attorney look? Where does someone find other sources of mentoring? There are many sources. The state and local bars, including the Maricopa County Bar Association, have programs available. The American Bar Association has programs as well. There are also various online resources for mentoring and guidance, from websites on specific topics to interactive blogs.

But in the end, the programs that are meaningful and worthwhile are those where individuals give of their time and talent to interact with and mentor those who need assistance.

I then thought about the lessons I had learned from one of my daily mentors. Over the years we developed a very close working relationship, and became good friends as well. He taught me many, many things through both lesson and example, including:

- How to apply the substantive nuances in a particular area of law
- How to interact with clients and instill confidence
- How to deal with difficult opposing counsel
- How to manage my practice, and at the same time maintain sanity and balance
- How to be an ardent advocate, while

still maintaining poise, professionalism and compassion.

The list of lessons keeps going. My thoughts continued—I owe a lot to all my mentors, but especially those that had such a defining influence on my career and the person I am.

The difference this time in psychoanalyzing my thought process was that I tracked the process full circle. I started out thinking about my daily mentor and friend for the past 15 years – Ed Wainscott. I then came back to that starting point. Ed recently passed away after a courageous battle with cancer, throughout which he remained a much needed mentor and confidant for both myself and many others.

And in the end, my thoughts turned to ways I can give of my time and act as a mentor to those in our profession. I thought of Ed as an example to emulate and follow. The unavoidable eventuality is that we will lose good mentors.

What we can do is strive to be good mentors as well. In my opinion, being a great mentor, even to one or a few, is one of the best ways to be remembered. ■

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Misconceptions of Foreclosure and Bankruptcy Lincoln's Bankruptcy: A Perpetuated Internet Myth

By Mark Winsor

I am amazed at how gullible people are. Humans tend to believe something just because it is reported on the news, whispered in gossip or sent in an e-mail.

Whenever I receive one of those e-mails passed on to countless multitudes of gullible readers, I do quick Google searches myself to see if there are contrary reports. More often than not I would discover the Internet gossip was merely a hoax or a mean-spirited rumor. I am generally too busy now and have just learned to take Internet and e-mail information with a grain of salt.

I may seem overcautious or overly skeptical, but experience has taught me to not believe everything I read on that amazing digital library. Law school and years as an attorney deepened my "believe it when I research it" attitude. I would think all attor-

neys possessed an increased desire to research facts before claiming as evidence something they merely read on someone else's website.

However, website after website, including law firm websites, boldly exclaim that Abraham Lincoln filed bankruptcy.

I understand the importance of reducing client guilt by telling them that many "famous people" filed bankruptcy. A foxhole is not nearly as bad when shared by someone else. It is even better if it is John Wayne or somebody else who is famous.

So, if Honest Abe filed bankruptcy and then became president of the United States, then the shame a debtor feels in filing bankruptcy is replaced by comfort. I don't think it is bad to comfort someone by directing their attention to other noble passengers of the bankruptcy boat. But, it is a pretty good

idea to use a famous person who actually filed bankruptcy.

I have to admit I fell into the "Abraham Lincoln bankruptcy" trap early in my bankruptcy practice. I did research before spreading that misguided rumor. But there were so many websites with Abraham Lincoln on the distinguished list of celebrity bankruptcies that I failed to go to a true source. Finally, I decided to check it out.

I looked in historical resources and could not find one mention of Lincoln's bankruptcy. Finally, I sent an e-mail to Roger Norton, who is one of the most prominent researchers in the United States on the life of Abraham Lincoln and maintains a wonderful website at <http://home.att.net/~rjnorton/Lincoln.html>. He replied:

"Hello, Mark. You are absolutely correct. Although Lincoln was involved in a business that failed, and his debts were so large he jokingly referred to them as the 'National Debt,' he never actually filed for bankruptcy. He slowly brought himself out of his indebtedness through his salary as a state legislator, fees he collected as a surveyor and postmaster for New Salem, and more importantly, his law practice. During the 1835-1845 period, Lincoln was able to pay off his entire debt (which, at its worst, was roughly \$1100). Thank you for writing."

I guess if something is said enough times people will believe it is true. But it still doesn't make it true. ■

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The MCBA does not necessarily endorse the views expressed by contributors and advertisers.

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The Water Case Turns 30



Clerk's Corner

Michael K. Jeanes
Clerk of the Superior Court

The Gila River General Stream Adjudication (commonly known as the Water Case) reached a milestone 30th anniversary on April 24. Special Master George A. Schade, Jr. was kind enough to contribute his insight and historical perspective into the case's development and accomplishments for this month's article.

Starting as petitions filed with the Arizona State Land Department in 1974 and 1978 to determine conflicting water rights to the Salt, Verde, Gila and San Pedro Rivers, the cases were transferred in April 1979, to the superior court in the counties where the original petitions were filed.

In 1981, the Arizona Supreme Court consolidated the adjudications of the Salt, Verde, Gila and San Pedro Rivers and ordered the case conducted in the superior court in the county having "the greatest number of potential claimants." The consolidated adjudication was transferred to the Superior Court in Maricopa County and assigned case number W-1, W-2, W-3, and W-4 (Consolidated), *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*.

Nearly one million summonses were thereafter served on water users and potential claimants. Summonses are served on new water users. The summons requires the filing of a statement of claimant with the Clerk of the Superior Court in Maricopa County if one wants a water use adjudicated.

The objective is the judicial determination or establishment of the extent and priority of the water rights of all persons to use a river system. Over 26,000 water users, in 14 of Arizona's 15 counties, have filed nearly 82,000 water right claims. Claimants are the State of Arizona, United States, Indian tribes, cities, towns, mines, farmers, cattle

growers, water providers, and domestic well users.

Rights to surface water—streams, lakes, canyons, springs and subflow—are being adjudicated. Subflow are those waters which find their way through the sand and gravel of a streambed, or lands under or immediately adjacent to the stream, and are themselves a part of the surface stream. Subflow issues have been litigated for over 20 years. Neither groundwater nor Central Arizona Project water is subject to the Water Case.

The Hon. Eddward P. Ballinger, Jr., appointed water judge by the Arizona Supreme Court in 2000, presides over both the Gila River and Little Colorado River Adjudications. The latter case proceeds in the Superior Court in Apache County.

The Arizona Department of Water Resources is the court's technical adviser. The department investigates all claims, prepares technical reports, maintains a central information repository, and conducts service of summonses.

The department's hydrographic survey reports contain findings and recommendations to which all claimants may object. Special Master Schade organizes the objections and issues of broad legal significance into contested cases, hears evidence, and submits a report and recommended final decree to the court.

After hearing and resolving any objections to the special master's report, the court will issue a final decree for each watershed. The final decrees will establish the existence and ownership of claimed water rights as well as attributes of the water rights including location of diversions, water uses, quantities of water used, and date of priority of water rights.

Evaluating the Water Case by the years that have passed since it began overlooks significant accomplishments. The United States and Arizona Supreme Courts have answered complex legal and procedural issues, some of first impression, and efforts to settle substantial federal reserved water rights claims have succeeded.

The court approves all water rights settle-

ments. Arizona has approved more Indian water rights settlements than any other western state. The water rights of the Salt River Pima-Maricopa Indian Community, Fort McDowell Yavapai Nation, Yavapai-Prescott Indian Tribe, San Carlos Apache Tribe (Salt River), Tohono O'odham Nation, and the Gila River Indian Community have been resolved.

The court has issued partial decrees for certain federal reserved water rights of the Saguaro National Monument, Coronado National Memorial, and Bureau of Land Management. The special master has issued reports concerning the federal reserved water rights claimed for Arizona State Trust Lands and Fort Huachuca. Work is ongoing on the reserved water claims of the San Pedro Riparian National Conservation Area, Powers Garden, and Aravaipa Canyon Wilderness Area.

Early in the adjudication process, the court established a procedure whereby the Clerk of Superior Court was to prepare a monthly docket containing specific information to be provided to parties. The procedure was outlined in Pre-Trial Order No. 1 (May 30, 1986).

The clerk's website allows customers to view the dockets prepared by the Clerk's office. Dockets available online begin with

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the year 2001 and are located at clerkof-court.maricopa.gov/watercase.asp. For access to dockets before 2001, please contact the Clerk of the Superior Court in Maricopa County.

The special master maintains a website dedicated to the Water Case, including links to minute entries and orders, some dating to 1986. The website provides a calendar of events, overview of the case, an online newsletter and rules of procedures. Visit www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/Index.asp. ■

Lawyer Referral Service Needs You

Potential clients can be yours with the MCBA Lawyer Referral Service. The LRS receives more than 100,000 calls per year from people seeking legal assistance as well as attorneys referring clients outside their practice area.

Among the areas needing coverage are: administrative law, SSI-SSD/Medicare law, workers' compensation, and immigration. Spanish-speaking and West Valley attorneys are also needed.

It's easy to join! Call Linda Peña at (602) 682-8590.



PRESENTS THEIR 1ST ANNUAL

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JUNE 6, 2009 ■ 7:30 A.M.

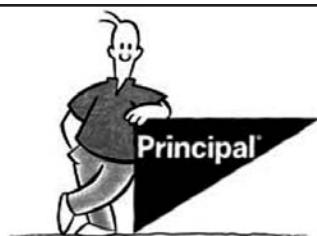
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New Arizona Supreme Court Chief Justice, Vice Chief Justice Elected

The Arizona Supreme Court announced Vice Chief Justice Rebecca White Berch has been elected to serve a five-year term as chief justice, and Justice Andrew Hurwitz was elected to serve as vice chief justice of the Arizona Supreme Court.

Both positions become effective on July 1, following the retirement of current Chief Justice Ruth V. McGregor.

"I am pleased to be leaving the leadership of the Arizona Judicial Branch in the capable hands of Justices Berch and Hurwitz," Chief Justice McGregor said. "I know that they, and the rest of the court, will continue to move the court system forward."

Vice Chief Justice Berch was appointed to the Arizona Supreme Court in March 2002. Before her appointment to the Supreme Court, she served the state in several capacities, as solicitor general, special counsel to the attorney general, first assistant attorney general, and as a judge on the Arizona Court of Appeals.

"I am honored to have been asked to

serve as chief justice," Vice Chief Justice Berch said. "Although our court system faces challenges in these difficult times, we also have significant opportunities to review all aspects of the court system to ensure that we continue to provide access to justice to all."

Justice Hurwitz was appointed to the Arizona Supreme Court in 2003. Before joining the Arizona Supreme Court, Hurwitz was a partner at Osborn Maledon, PA, where his practice focused on appellate and constitutional litigation, administrative law and civil litigation. He is admitted to the bar in Arizona and Connecticut; he received the highest grade on the Arizona Bar examination in the summer of 1974.

"Justice Hurwitz will make an outstanding Vice Chief Justice," Vice Chief Justice Berch said. "With his broad experience in government and his exceptional analytical mind, the court system will rely heavily on him in this new role." ■

Gov. Brewer Appoints Beene and McCoy to Superior Court

Gov. Jan Brewer announced the appointments of James P. Beene and M. Scott McCoy to the Maricopa County Superior Court.

Beene currently serves as the appeals and extraditions bureau chief for the Maricopa County Attorney's Office. He has spent his career in public practice, including service as an assistant attorney general and deputy county attorney with the Maricopa and Pinal County Attorneys' Offices.

"Jim's extensive trial and appellate court experience at all levels coupled with his expertise in criminal law will be a tremendous asset to the Maricopa County Superior Court," Gov. Brewer stated.

Beene received his undergraduate degree from the University of California at Santa Barbara and his law degree from the University of Arizona College of Law. This appointment was made to fill the vacancy created by the retirement of the Hon. Anna Baca.

McCoy currently serves as a court commissioner for the Maricopa County Superior

Court. As a commissioner he has handled civil, criminal, family and probate calendars. He spent several years in private practice with the law firms Beus, Gilbert & Morrill, Kirkland & Ellis, and Jennings, Strouss & Salmon.

"Commissioner McCoy has a breadth of legal experience and expertise that will serve the citizens of Maricopa County well as a superior court judge," Gov. Brewer stated.

Commissioner McCoy received his undergraduate degree from the University of Southern California and his law degree from the University of Arizona College of Law. This appointment was made to fill the vacancy created by the retirement of the Hon. Louis Araneta.

"I am proud to appoint these two very talented individuals to serve as our newest judges," Gov. Brewer said. "Their experience and dedication will be a tremendous addition to the Maricopa County Superior Court." ■

INSIDE THE PARALEGAL DIVISION

Ten Reasons to Be a Member of the Paralegal Division



Paralegal Division President

Maureen L. Zachow

In these tough economic times we are all trying to pare down our expenses. Hopefully your membership in the MCBA Paralegal Division is not one of your budgetary cuts. There are many benefits to being a member of the MCBA Paralegal Division.

Top 10 Reasons to be a member of the Paralegal Division:

- **Networking:** The chance to meet and talk with other paralegals in all types of positions, law firms – solo practitioner to large, corporate, government.
- **Job Bank:** List of job openings received from the legal community.
- **Access to website:** Ability to keep up to date on Paralegal Division events and access to the “members only” section of the website.
- **Mentoring program:** Experienced paralegals giving guidance to paralegal students, new paralegals or any paralegal needing assistance.
- **CLE:** Opportunity to earn three free hours of CLE by attending the Paralegal Division’s Quarterly meetings; receive discounted rates on other MCBA-sponsored CLE.
- **Discounted rate for the annual Arizona Paralegal Conference.**
- **Review classes:** Opportunity to enroll in CLA and PACE review courses.
- **Maricopa Lawyer:** Receive the monthly newspaper featuring “Inside the Paralegal Division.”
- **Giving back to community:** The Paralegal Division sponsors a variety of charitable events throughout the year, including the Dental Drive benefiting the John C. Lincoln Dental Clinic, collection of toys at Christmas for children in need, and fundraising for the William K. Eaton School.
- **Social events:** Bowling event and End of Year Celebration.

Thank you to everyone that attended our very successful bowling event, and to those who were unable to join us this year, we hope to see you next year.

We look forward to seeing you at our quarterly meeting on June 16. The topic is Attorney-Client Privilege. Lunch will be served at 11:30 a.m., with the presentation beginning at noon. Look for details on our website at www.maricopabar.org; click on the “For Paralegals” link. ■

Calendar of Events

MAY

- 6 Wednesday Conference Committee Meeting
- 9 Saturday CLA Review Classes Begin
- 11 Monday Board of Directors Meeting

JUNE

- 1 Monday Dental Drive Begins
- 2 Tuesday Conference Committee Meeting
- 8 Monday Board of Directors Meeting
- 16 Tuesday Quarterly Division Meeting
11:30 Lunch
Noon Presentation begins
2001 N. 3rd Street (MCBA temp office)

JULY

- 7 Tuesday Conference Committee Meeting
- 10 Friday Dental Drive Ends
- 11 Saturday CLA Review Classes Ends
- 13 Monday Board of Directors Meeting
Assemble Dental Drive Bags following BOD Meeting

AUGUST

- 4 Monday Conference Committee Meeting
- 10 Tuesday Board of Directors Meeting

SEPTEMBER

- 8 Tuesday Conference Committee Meeting
- 14 Monday Board of Directors Meeting
- 25 Friday 10th Annual Paralegal Conference
Location: Phoenix Civic Center
Registration: 7:30 a.m.

Board of Director and Conference Committee meetings are held at 5:30 pm unless otherwise specified. Board of Director, Conference Committee and Quarterly Division Meetings are held at the MCBA office unless otherwise specified. ■

For more information on Paralegal Division events please visit our web site at www.maricopabar.org and click on the “For Paralegals” link.

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ARIZONA PARALEGAL CONFERENCE 2009

Sponsored by the MCBA Paralegal Division

PARALEGALS: BUILDING OUR LEGACY: A DECADE OF GROWTH

WHEN: Friday, September 25, 2009 - 7:30 a.m. – 5:00 p.m.

REGISTRATION: 7:30 – 8:30 a.m.

PROGRAM: 8:30 a.m. – 5:00 p.m.

WHERE: Phoenix Convention Center, Downtown Phoenix
100 North Third Street (South Bldg., Exhibit Rms 160-167)

FEATURING: Robert E. LeClair, Esq., Scott A. Hauert, Esq., Therese A. Cannon, Esq., Susan J. Howery, M.A., Meredith Larabee, and Sybil Taylor Aytch, RP, M.Ed:

“The Future of the Paralegal Profession: Sustaining Viability in a Sharply Competitive Industry”

Jonathan B. Frutkin, Attorney, The Frutkin Law Firm, PLC: “Bankruptcy Myth”

Marc H. Lamber, Director, and James Goodnow, Associate, Fennemore Craig, P.C.:

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Joshua Woodard, Partner, Snell & Wilmer, L.L.P.:

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Budget Cuts Force Cancellation of Night and Saturday Court

By Karen Arra

After two years of providing extended hours, Maricopa County Superior Court will be closing its doors on the night and Saturday court operations at the Northeast Family and Durango Juvenile court locations in Phoenix.

"Revenue shortfalls for the state and county continue to challenge our ability to provide exemplary programs and services," Presiding Judge Barbara Rodriguez Mundell said. "As we enter the new fiscal year, we need to make budget cuts that will allow the court to reach a balanced budget."

The extended hour courts began in January 2007, and have offered services such

as decree on demand, child support enforcement, parenting time enforcement, Title 14 guardianships, adoptions and extension hearings. Judges, commissioners and staff supporting these programs have assisted more than 22,000 litigants and attorneys and handled more than 13,000 hearings.

"It's hard to see these programs end. Litigants appreciate the flexibility of attending hearings after work or school," Judge Mundell said.

Legal matters currently on the docket will be heard as scheduled, but future events will be set on court calendars during regular business hours. Both of these programs are expected to be shut down in June. ■

Court Budget Forces Program Cuts

By Karen Arra

Budget cuts have forced Superior Court to close several Self-Service Center locations.

The Self-Service Centers in the Downtown Justice Center and San Tan Regional Court Facility will close in May.

The remaining Self-Service Centers at Downtown Superior Court, Southeast Judicial Complex, Northwest Court Facility and Northeast Regional Court Complex will continue to be open.

"It's hard to close these facilities because they provided a valuable service," Presiding Judge Barbara Rodriguez Mundell said. "I know litigants in Maricopa County appreci-

ated the convenience of having a Self-Service Center close to their home."

In order to continue to provide these services without the costs of staffing centers, forms will continue to be available online through eCourt (ecourt.maricopa.gov/index.asp) and at the Self-Service Center website (www.superior-court.maricopa.gov/SuperiorCourt/Self-ServiceCenter/Index.asp).

"We are encouraging parties to use our website for help with their court cases," Judge Mundell said. "Using the court's website is convenient and saves time and money. The forms and instructions can be easily accessed 24 hours a day." ■

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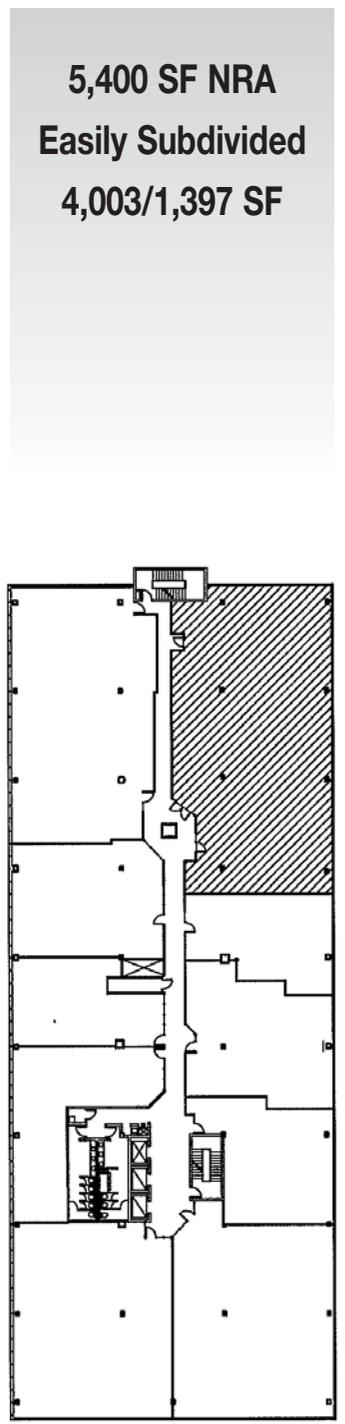
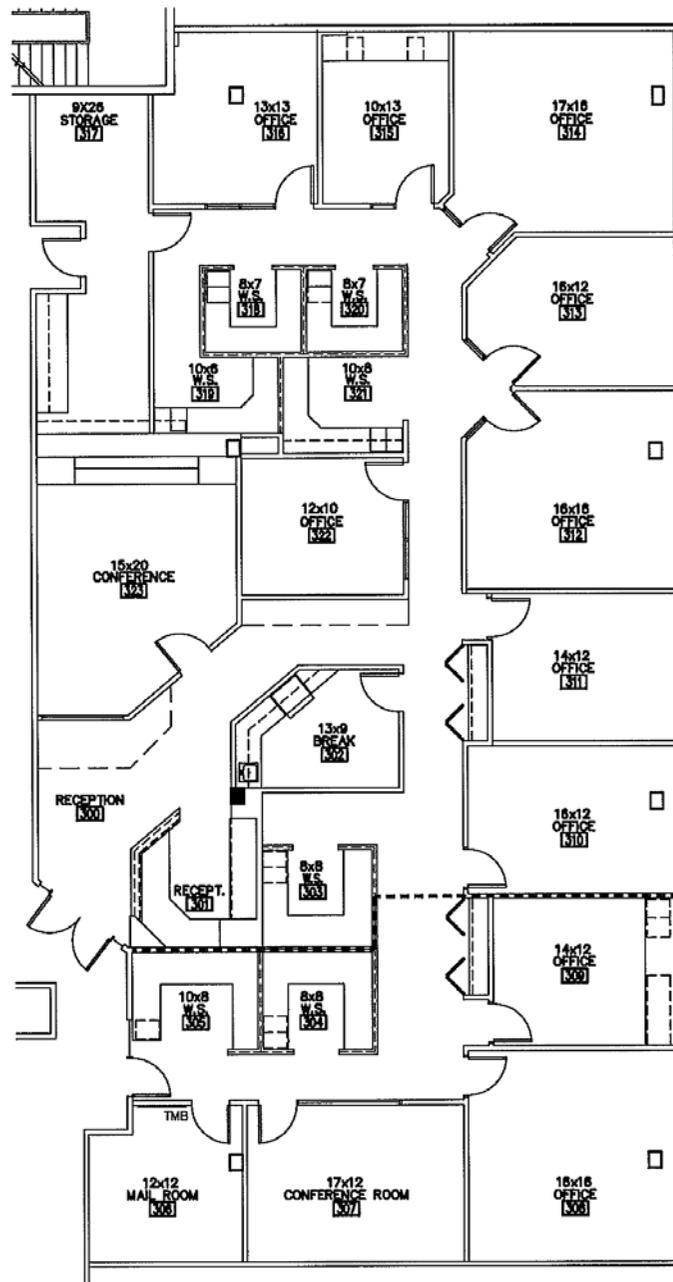
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Legal Briefs

By Joan Dalton

Chief Justice Ruth McGregor Will Leave Bench for Retirement

On March 23, Chief Justice Ruth McGregor announced during a joint session of the Arizona House and Senate that she will resign as chief justice and from the Arizona Supreme Court effective June 30, 2009. McGregor, an ASU law school graduate, has enjoyed a long and accomplished legal career in Arizona. She stated that she is leaving the bench to spend more time with her family and to pursue other interests.

FBI Receives Rosemary Award for Worst FOIA Performance

The National Security Archives (NSA), an independent non-governmental research institute and library located on the campus of Georgetown University, bestowed its Fifth Annual Rosemary Award on the Federal Bureau of Investigation for the worst Freedom of Information Act performance by a federal agency.

The institute says that "[t]he FBI's reports to Congress show that the bureau is unable to find any records in response to two-thirds of its incoming FOIA requests on average over the past four years, when the other major government agencies averaged only a 13 percent 'no records' response to public requests."

For the past four years, the award has been issued by the NSA to a federal agency exhibiting outstandingly poor performance in responding to FOIA requests. NSA named the Rosemary Award after President Richard Nixon's secretary, Rose Mary Woods, for "the backwards-leaning stretch with which she erased an eighteen-and-a-half minute section of a key Watergate conversation on the White House tapes."

Past awards have gone to the U.S. Treasury (2008), the U.S. Air Force (2007) and the Central Intelligence Agency (2006). For more on the Rosemary awards, as well as a pictorial exhibit of Rose Mary Woods

demonstrating her backwards-leaning stretch, visit: www.gwu.edu/~nsarchiv/news/20090313/index.htm.

Report Lists 'Top 10' Most Wanted Federal Documents

A report published by the Center for Democracy & Technology and OpenTheGovernment.org lists the "Top 10 Most Wanted Federal Documents" as follows:

- Public access to all Congressional Research Reports
- Information about the use of TARP and bailout funds
- Open and accessible federal court documents on the federal judiciary's PACER system
- Current contractor projects
- Court settlements involving federal agencies
- Access to comprehensive information concerning legislation and Congressional actions
- Online access to electronic campaign disclosures
- Daily schedules of the President and Cabinet officials
- Personal financial disclosures from policymakers across government
- State Medicaid plans and waivers

Visit www.openthegovernment.org/otg/TopTenReport.pdf to view the report in its entirety.

Federal Judicial Conference Takes Action on 'Sealed Cases' Visibility

The Judicial Conference voted in March to have Internet lists of sealed criminal and civil cases include a generic title such as "Sealed vs. Sealed."

Currently, lists of sealed cases are accessible through the PACER system, but the public user must create a couple of PACER queries before being able to confirm that a case is under seal. This action furthers the conference's 2007 policy initiative to provide the public with information to confirm the existence of sealed cases. ■

To Whom it May Concern: A Review of Who and Whom



Legal Writing
Tamara Herrera

One of the most basic grammar rules can also be one of the hardest to apply if a sentence is complex.

All grammarians agree that "who/whoever" is always used as a subject and "whom/whomever" is always used as an object. In sentences that do not adhere strictly to the straightforward subject-verb-object formula, however, it can be difficult to tell whether "who" or "whom" is the proper pronoun.

Simple sentence: *Who is bringing the book?* ["Who" is the subject of the sentence.]

More complex sentence: *Is she the judge whom you worked for last year?* ["Whom" is the object of the preposition "for."]

Some grammar texts offer this piece of advice in deciding whether to use "who" or "whom": Rewrite the phrase in question in a subject-verb-object formula and replace

"who" or "whom" with an appropriate gendered pronoun.

If the gendered pronoun would be "he" or "she," then the pronoun is operating as a subject, and the proper pronoun is "who." If the gendered pronoun would be "him" or "her," then the proper pronoun is "whom."

For example, in the second example sentence above, the phrase in question is " you worked for last year." Rewritten in a subject-verb-object formula, this phrase would read as follows:

you worked for last year

Using the appropriate gendered pronoun, the phrase would then read as follows:

you worked for her last year

Thus, "whom" is the appropriate pronoun to use in the original phrase, as shown above.

On a final note, perhaps the best piece of advice is from Bryan Garner, in *The Redbook, A Manual on Legal Style, Second Edition*: "If the sentence is so complex that it is hard to tell whether the term is subjective or objective, you should probably rework the sentence."

Who knew?! ■

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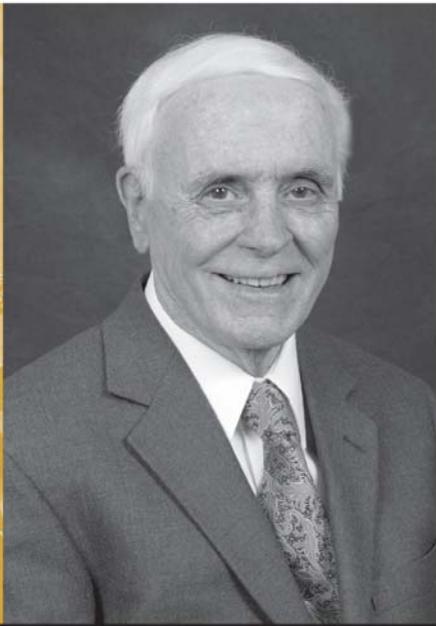
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MAY 2009

All events are held at the temporary MCBA headquarters at 2001 N. 3rd Street, Suite 204, Phoenix, unless otherwise noted. Also check www.maricopabar.org or call (602) 257-4200.

1 Estate Planning, Probate & Trust 7:30 a.m. CLE: Sweetheart Today, Plaintiff Tomorrow 12 p.m. CLE: Guess Who's Coming to Dinner: Cross Cultural Competency in the Practice of Law 4 p.m., Wild Thaiger Restaurant, 2631 N. Central	13 Environmental & Natural Resources Section Board 12 p.m. Lawyer Referral Committee 12 p.m.
4 Volunteer Lawyer Program 12 p.m.	14 MCBA Board of Directors 4:30 p.m.
6 Paralegal Division Conference Committee 5:30 p.m.	15 MCB Foundation Board of Trustees 7:30 a.m.
7 Construction Law Section Board 12 p.m. Estate Planning, Probate & Trust Section Judicial Reception 5 p.m.	16 Paralegal CLA Review Class 9 a.m.
8 Construction Law Section Board 8:30 a.m. CLE: A Day with the Experts—Construction Soil, Repair, Engineering and Assembly Issues 9 a.m. (all day)	19 CLE: Fascinating Jewish Trials that Changed History: The Dreyfus Case 12 p.m.
9 Paralegal CLA Review Class 9 a.m.	21 CLE: Interplay of Estate Planning and Family Law 7:30 a.m.
11 YLD Board 12 p.m. Paralegal Division Board 5:30 p.m.	20 Employment Law Section 12 p.m.
12 CLE: Ethics for Public Lawyers 12 p.m.	22 MCBA Closed at 12 p.m.
	25 MEMORIAL DAY HOLIDAY MCBA Closed
	28 CLE: Effectively Representing Domestic Violence Victims: Legal and Practical Aspects 12 p.m.
	29 CLE: e-Discovery and Document Retention Under the Current Federal Rules of Civil Procedure 12 p.m. Corporate Counsel CLE Lunch 12 p.m.
	30 Paralegal CLA Review Class 9 a.m.

*Please watch your MCBA E-News for updated information about meetings and events.

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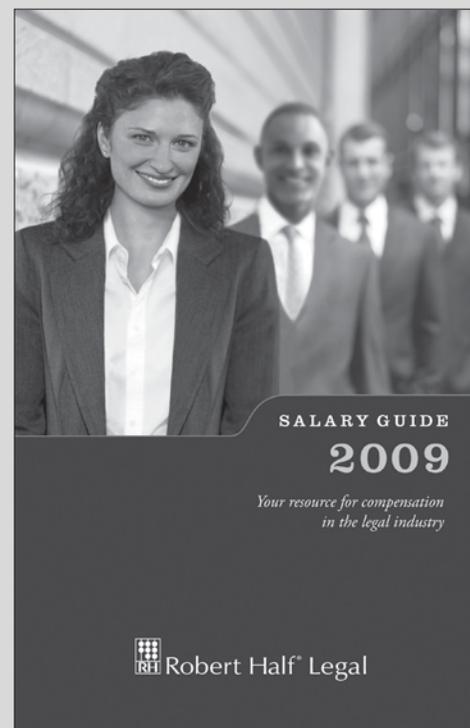
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VLP Award Recipients Make Society 'Comfortable, Respectful'

By Peggi Cornelius, VLP Programs Coordinator

On May 4, the Maricopa County Volunteer Lawyers Program (VLP) will celebrate the pro bono accomplishments of nearly 1,000 volunteers during a luncheon at the Phoenix Hyatt Regency. U.S. Supreme Court Justice Sandra Day O'Connor will provide the keynote address and Arizona Supreme Court Chief Justice Ruth V. McGregor will present the "For Love of Justice" pro bono awards for outstanding contributions to VLP in 2008-2009.

The VLP provides civil law assistance to low-income clients whose legal problems impact quality of life for them and their families. Their requests for advice and representation often involve housing, family and consumer law issues. In the best of times, the number of people in need exceeds available resources, and in times of economic hardship the need grows greater.

While community need makes it imperative to enlist attorneys in pro bono work, VLP is also compelled and delighted to recognize and highlight the tremendous difference volunteer lawyers and other legal professional volunteers are making in people's lives.

As one client said, "The VLP was a life-saver for me. It is attorneys such as these that make society a more comfortable and respectful place to live."

Those who will receive recognition on May 4 are representative of hundreds like them who give of themselves, their expertise, and their economic resources to support equal access to justice.

Frank X. Gordon, Jr. Traveling Award

The Arizona Equal Justice Foundation Board of Directors: Timothy Berg, Jerry Bonnett, John Bouma, William Holm, Ben Hufford, Lawrence Katz, Lawrence Scarborough, Robert Matia, Jones Osborn II, Dean Short II, Kent Stevens, Kenneth Van Winkle, Jr., Jeffrey Verbin, John West, and Herbert Zinn

Community Legal Services 'Decade of Dedication' Award

Steven Biddle

Law Firm Support Awards

Ballard Spahr Andrews & Ingersoll, Quarles & Brady, Snell & Wilmer

Attorneys of the Month, May 2008 – May 2009

James Craft, Stanley Friedman, Kami Galvani, Christina Geremia, Allen Ginsberg, Zachary LaPrade, Nicole Ann Miller, Rebecca Owen, Bradley Pack, Jane Proctor, Charles Schock, Victoria Tandy, and Robert Wermager

Clinic Services and Consumer Law Awards

Kolby Granville and Hyung Choi

Community Outreach and Volunteer Recruitment Awards

Ann-Marie Almeddin and James Belanger

Family and Children's Law Awards

Joseph Collins, Kiilu Davis, Sara Gardner, Boren Logan, Merrill Robbins, Adrienne Wilhoit, and Laura Zeman

HIV/AIDS Law Project Awards

George Chen, Daniel Ho, and Neil Landeen

Home Owner and Tenants' Rights Awards

T.J. Davis and Ernest Modzelewski

Pro Bono Attorneys of the Year in counties served by Community Legal Services

Kenneth Moyer (Mohave), Mark Kille (Yavapai), and Cristyn Weil (Yuma)

Paralegal of the Year Award

James Gough

Litigation Support Awards

Frontier Private Process Service, Pamela Griffin and Griffin & Associates ■

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for accepting 43 cases during the past month.

VLP supports pro bono service of attorneys by screening for financial need and legal merit and providing primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

For information about cases and other ways to help, please contact Pat Gerrich at VLP at (602) 254-4714 or pgerrich@clsaz.org.

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'For Love of Justice' Awards Event Sponsors

The Volunteer Lawyers Program is grateful to the law firms and individuals whose generosity makes it possible to recognize and celebrate those who provide pro bono legal assistance to low-income residents of Maricopa, Mohave, Yavapai and Yuma counties.

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The MCBA has entered a new, online frontier by establishing pages on Facebook, MySpace and Twitter. Add us to get the latest news and updates on everything MCBA, from CLE and networking events, and even MCBA re-construction.

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THE BULLETIN BOARD

News from the legal community

The *Maricopa Lawyer* invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome. Send your news via e-mail to maricopalawyer@maricopabar.org.

Moves and New Hires

Stinson Morrison Hecker, LLP, announces the election of **James E. Holland, Jr.** as partner. Holland practices in the Business Litigation Division of the firm and has considerable experience in construction litigation, insurance defense and election law.



James E. Holland, Jr.

James Rogers, whose practice focuses on appellate law and litigation, has joined Osborn Maledon, PA, as an associate.



James Rogers

Jennings, Strouss & Salmon, PLC, is pleased to announce that **Bradley P. Hartman** has joined the firm as a member in the firm's Phoenix office. Hartman will practice in the Intellectual Property and Litigation Departments.



Bradley P. Hartman

The Frutkin Law Firm, PLC, is proud to announce the addition of **Carolyn R. Tatkin, Esq.** as senior counsel to the firm. Tatkin has more than 20 years of litigation experience and will work in the firm's bankruptcy practice.



Carolyn R. Tatkin

Lewis and Roca is pleased to announce that Gov. Jan Brewer has named Katosha Nakai as policy advisor on tribal affairs. In her new position, Nakai will serve as the governor's primary liaison to Arizona's 22 Indian tribes as well as to all tribal interests affecting the Indian community. Prior to her appointment by Gov. Brewer, Nakai's practice at Lewis and Roca focused on government regulation, infrastructure and resource development.

Honors and Awards

Trish Stuhan (third from left), a third-year law student at the Arizona State University Sandra Day O'Connor College of Law, won the Regional Championship of the ABA Representation in Mediation Competition last month. A former law clerk at the firm, Stuhan will join Gust Rosenfeld as an associate attorney in August.



Trish Stuhan

News and Events

Paul E. Burns, intellectual property and litigation attorney, mediator, and partner at Phoenix-based Gallagher & Kennedy, PA, will teach one of the first law school courses on e-discovery in the country at Arizona State University's Sandra Day O'Connor College of Law this fall.



Paul E. Burns

Electronic discovery, or "e-discovery", refers to discovery in civil litigation, which deals with information in electronic format, such as e-mail, instant messaging chats, electronic documents, accounting databases, websites, and other electronically stored information that could be relevant evidence in a lawsuit.

Cecil Patterson, Jr., sat on the John P. Morris Memorial Lecture panel that discussed, "A Dream Realized and the Road Ahead: The Meaning of Barack Obama's Election as President of the United States," at the Sandra Day O'Connor College of Law.

The John P. Morris Memorial Lecture honors John Peyton Morris, a faculty member at the College of Law from 1968 to 1993. Morris was committed to the principles of justice and equal opportunity and worked tirelessly throughout his life to foster diversity.

In addition to Patterson, panelists included: **Kesha A. Hodge**, commercial litigation associate with Poli & Ball, PLC, and immediate past president of the Arizona Black Bar; **Jocquese Blackwell**, deputy public defender in the Maricopa County Public Defender's Office; and **Terence Whatley**, associate at Snell & Wilmer, LLP ■



The MCBA joined some 300 emerging lawyer organization leaders from across the country at the American Bar Association's Bar Leadership Institute (BLI) from March 12-14. Held annually in Chicago for incoming officials of lawyer organizations, the institute provides the opportunity to confer with ABA officials, bar leader colleagues, executive staff, and other experts on the operation of such associations. From left: Jennifer Green, MCBA president-elect; H. Thomas Wells, ABA president; Carolyn B. Lamm, ABA president-elect; Allen Kimbrough, MCBA executive director; and David Benton, MCBA treasurer.

Date Set for 2009 Summer Associates Social

Meet and mingle with legal professionals at the 2009 Summer Associates Social on Thursday, June 18.

Set to take place at the George Washington Carver Museum at 415 E. Grant St., Phoenix, the social will offer a great networking opportunity for summer associates, as local judges

and bar leaders will be in attendance.

"This is a great opportunity for summer associates because there will be influential guests in attendance that can provide advice and guidance for attorneys just beginning their careers," CLE Director Laurie Williams said. "That advice and guidance can go a long way

for some attorneys."

Complimentary drinks and hors d'oeuvres will be available at the MCBA Diversity Committee-sponsored event.

For more information or to register, please contact Laurie Williams at lwiliams@maricopabar.org or call (602) 257-4200. ■

Get a Cool Deal in the Summertime

continued from page 1

member" as an attorney who has not been a member of the MCBA in 2008 or 2009. (They may have been a member in 2007 or before.)

The recruiting attorney's name must be indicated or mentioned by the "new member" at the time of application, which may be either by phone, e-mail or mail.

The Cool Deal in the Summertime ends on Sept. 30.

To get your recruit signed up, download a Membership Application from the MCBA website at www.maricopabar.org. Just click on the "Join/Membership Services" tab and scroll down to the "Join" information near the bottom. ■

MCBA Goes Green with Recycling Bins

By Aaron Nash, Public Lawyers Division

The Public Lawyers Division of the Maricopa County Bar Association recently donated recycling bins for the county bar's offices.

The bins are available for clean, empty glass, aluminum and plastic recyclable containers. The county bar hosts numerous meetings, CLEs and events throughout the year, generat-

ing thousands of soda, water and other beverage containers that can now be recycled. Please make use of the recycling bins on your next visit to the MCBA offices and help the bar go green.

All licensed attorneys who live or work in Maricopa County and who identify themselves as working for a public agency are automatically enrolled in the Public Lawyers Division when

they join the MCBA. There are no additional dues for taking part in this division.

The board meets at the MCBA during the lunch hour on the second Tuesday of every month. All members and those interested in becoming members are invited to attend.

For more information on the Public Lawyers Division, contact Laurie Williams at lwiliams@maricopabar.org. ■

CLE COMMUNIQUE

CONTINUING LEGAL EDUCATION FROM THE MARICOPA COUNTY BAR ASSOCIATION

WHERE THE LEGAL COMMUNITY CONNECTS

To register, use the registration form on this page, go to www.maricopabar.org, or call Jennifer Deckert at (602) 257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA office: 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004.

FRIDAY ■ MAY 1

12-1 P.M. (lunch included)

Sweetheart Today, Plaintiff Tomorrow

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

In this program you'll learn how office romances can turn into claims of sexual harassment and/or hostile work environment, which could ultimately result in an EEOC claim or lawsuit and cost not only money but time and attention away from the work day. Most often, one employee is lost and morale is severely affected, especially if co-workers believe the wrong employee was discharged.

PRESENTERS:

Doryce Norwood, General Counsel, Circle K
T.J. Davis, Ph.D., J.D., Arizona State University
David Villadolid, Burch & Craciolo, PA

SPONSORED BY: Employment Law Section

COST: EL section member: \$35
 MCBA member: \$40
 Non-member: \$60
 Law student member: \$10

FRIDAY ■ MAY 1

4-5 P.M. (YLD social to follow)

Guess Who's Coming to Dinner: Cross Cultural Competency in the Practice of Law

1 ethics credit hour

LOCATION:

Wild Thaiger Restaurant
2631 N. Central

This ethics program focuses on how to best serve clients through cultural knowledge, awareness, sensitivity and competence. The presenter will examine common mistakes attorneys make in client representation and how to avoid these by developing skills in cross cultural competency. Additionally, the presenter will provide tips on appropriate client interaction and staff training in this subject area

PRESENTER: David N. Horowitz, Lorona Steiner
Ducar Coughlin & Horowitz, PLLC

SPONSORED BY: Young Lawyers Division

COST: YLD member: \$25
 MCBA member: \$30
 Non-member: \$50
 Law student member: No charge

FRIDAY ■ MAY 8 (All Day)

9 A.M.-3:30 P.M. (Lunch included)

A Day with the Experts – Construction Soil, Repair, Engineering and Assembly Issues

6 credit hours

SCHEDULE

9 a.m.-12 p.m.

■ **Soil Issues and Repairs** - Discussion of some causes of unexpected performance of earthen materials due to various geotechnical phenomena, and development of appropriate repair recommendations

■ **Common Structural Engineering Issues in Construction Defect and Construction Collapse-Related Litigation**

12:30-3:30 p.m.

■ **Building Assemblies: Fundamentals and Failures** - Presentation of proper installation for shower, window, balcony and related assemblies, with exemplar photos of both proper and improper installation. Review of what happens when construction goes wrong, resultant damage, and proper repairs.

■ **Above All Roofs: The Good, Bad and Ugly** - Overview of roofing systems and their components and materials. How systems should perform and how and why they fail.

PRESENTERS:

Curt Peterson, Principal Engineer, Peterson Geotechnical Group, LLC
Ronald A. Starling, P.E., S.E., R.L.S., Starling Madison Lofquist, Inc.
Douglas R. Ward, General Contractor and General Manager, Phoenix Division, MC Consultants, Inc.
Jerry Conrad, Western States Roofing Consultants

SPONSORED BY: Construction Law Section

COST: Construction Law Section member: \$160
 MCBA member: \$180
 Non-member: \$300
 Law student member: \$10

MONDAY ■ MAY 11 ■ 5 P.M.

Baseball, Apple Pie and CLE

LEGAL ISSUES IN PROFESSIONAL BASEBALL

1 credit hour

LOCATION:

Chase Field, Phoenix

Put some fun in your Monday and take in a game between the Diamondbacks and the Cincinnati Reds, beginning at 6:40 p.m. Before that, you'll get your CLE. Friends and family welcome for the game. Program will cover:

- 1st Amendment vs. Rights of Publicity: *C.B.C. Distribution and Marketing, Inc. v. MLBAM*
- Closed Captioning in Venues: *Feldman v. Pro Football, Inc.*
- Conducting Marketing Promotions

PRESENTERS:

Nona Lee, General Counsel Arizona Diamondbacks
Caleb Jay, Associate General Counsel Arizona Diamondbacks

COST:

Tickets are \$50 for members and \$70 for non-members. Extra tickets for non-CLE participating family and friends are \$20 each.

TUESDAY ■ MAY 12

12-1 P.M. (lunch included)

Ethics for Public Lawyers

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Learn from cases decided by the Arizona Supreme Court and the Disciplinary Commission on the Rules of Professional Conduct applicable to public lawyers, including honesty, improper cross-examination, failure to disclose evidence, conflict of interest, improper sexual relations, and more.

PRESENTER: Jessica Funkhouser

SPONSORED BY: Public Lawyers Division

COST: PLD member: \$35
 MCBA member: \$40
 Non-member: \$60
 Law student member: \$10

TUESDAY ■ MAY 19

12-1 P.M. (Lunch included)

Fascinating Jewish Trials that Changed History: The Dreyfus Case

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

The Dreyfus Affair (1894-1905) - A case of French military espionage that mobilized the people of France and divided them politically, militarily, religiously, and socially for more than a decade. The presenter will examine the historical, political, economic, and religious influences during the periods in which these landmark cases emerged to provide a greater appreciation of the interplay between history, politics and law.

PRESENTER: Amy Hirschberg Lederman, J.D., M.S., J.Ed.

SPONSORED BY: Anti-defamation League

COST: MCBA member: \$45
 Non-member: \$60
 Law student member: \$10

THURSDAY ■ MAY 21

7:30-8:30 A.M. (breakfast included)

Interplay of Estate Planning and Family Law

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This basic to intermediate program will cover:

- Family law for estate planning lawyers
- Estate planning for family lawyers
- Death during divorce process
- Community property issues

PRESENTER:

Beth Cohn, Jaburg & Wilk, PC
Diana Rader, Sacks Tierney, PA

CO-SPONSORED BY: Estate Planning, Probate & Trust and Family Law sections

COST: EPPT section member: \$30
 Family Law section member: \$35
 MCBA member: \$35
 Non-member: \$55
 Law student member: \$5

WEDNESDAY ■ MAY 27

12-1 P.M. (Lunch included)

eFiling for the Panicked and Unwilling

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

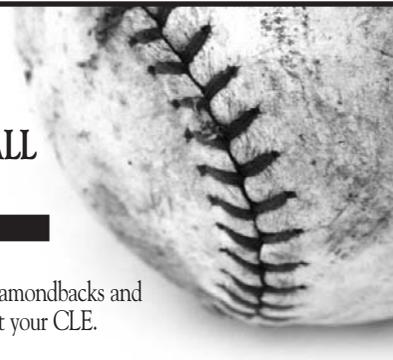
Mandatory eFiling is a matter of when, not if. This beginner's introduction to electronic filing will cover the absolute basics needed to prepare your office for eFiling. Topics include the hardware and software needed, traps to avoid, and recommendations for printers, scanners, internet speed, memory and online resources. If this description has you baffled, you need this course.

PRESENTERS:

Michael K. Jeanes, Clerk of the Superior Court, Maricopa County
C.J. Allen, Business Analyst, Clerk of the Superior Court

SPONSORED BY: Public Lawyers Division

COST: PLD member: \$35
 MCBA member: \$40
 Non-member: \$60
 Law student member: \$10



THURSDAY ■ MAY 28
12-1 P.M. (Lunch included)

Effectively Representing Domestic Violence Victims: Legal and Practical Aspects

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

Learn what every attorney needs to know to effectively represent a domestic violence victim in any legal action, including:

- Understanding domestic violence and its effects on the victim and the family
- View from the bench: Advocating for your client and proving the alleged domestic violence
- Understanding how domestic violence affects your attorney-client relationship and how to effectively communicate with your client, from the initial meeting to understanding the dynamics of leaving an abusive relationship when companion animals are involved

■ Insight from domestic violence survivors
 This program is strongly recommended for anyone interested in volunteering for the MCBA Young Lawyers Division pilot program, Legal Assistance to Women in Shelters (LAWS Program). For more information on LAWS, contact Leslie Satterlee at lsatterlee@nrqlaw.net.

PRESENTERS:

Leslie Satterlee (moderator), Nirenstein Ruotolo Gamice Group, PLC
 Nicole Siqueiros, De Blank & Toussaint, PA
 Hon. Dean Fink, Maricopa County Superior Court
 Lydia Peirce, Ryley, Carlock, and Applewhite

SPONSORED BY: Family Law Section

- COST:**
- Family Law section member: \$35
 - MCBA member: \$40
 - Non-member: \$60
 - Law student member: \$10

FRIDAY ■ MAY 29
12-1 P.M. (Lunch included)

e-Discovery and Document Retention Under the Current Federal Rules of Civil Procedure

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

In this intermediate level program, you'll get an overview of e-discovery rules in federal court and Arizona state courts, and an overview of document retention policies and practices.

PRESENTERS:

Raj Sivananthan, Bowman and Brooke, LLP
 Janell Adams, Bowman and Brooke, LLP
 (Both presenters have a full-time discovery practice for major manufacturers.)

SPONSORED BY: Corporate Counsel Division

- COST:**
- CC Division member: \$35
 - MCBA member: \$40
 - Non-member: \$60
 - Law student member: \$10

WEDNESDAY ■ JUNE 3
7:30-9:30 A.M. (Breakfast included)

Focus Groups and Jury Deliberation Dynamics

2 credit hours

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

If you've ever wondered about the value of using jury focus groups for trial, this basic to intermediate CLE program will give you answers. You'll also learn how to use focus groups most effectively.

PRESENTERS:

Marc Lamber, Fennemore Craig
 James Goodnow, Fennemore Craig

SPONSORED BY: MCBA

- COST:**
- Litigation Section member: \$55
 - MCBA member: \$65
 - Non-member: \$105
 - Law student member: \$5

TUESDAY ■ JUNE 16
7:30-9:30 A.M. (Breakfast included)

What Personal Injury Attorneys Must Know About Special Needs Trusts

2 credit hours

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

Learn when to use a special needs trust and understand the various types and which ones you need for personal injury settlements. You'll also explore the anatomy of these trusts and their related administration issues. Plus,

- Gain perspective on relevant public benefit programs and how they impact administration and funding
- Develop an understanding of Medicare and Medicaid liens
- Discover the important considerations with regard to structured settlements
- Investigate the use of a 468(b) Qualified Settlement Funds Trust
- Find out when to use a Medicare Set-Aside Arrangement
- Study attorney liability issues pertaining to special needs trusts
- Learn about selected case law, research materials and forms provided

PRESENTER: Keith Lyman, Frazer, Ryan, Goldberg & Arnold, LLP

SPONSORED BY: Estate Planning, Probate & Trust and Personal Injury sections

- COST:**
- EPPT section member: \$55
 - PI section member: \$55
 - MCBA member: \$65
 - Non-member: \$105
 - Law student member: \$5

TUESDAY ■ JUNE 16
12-1:30 P.M. (Lunch included)

eFiling in Superior Court

1.5 ethics credit hours

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

This course is a brief introduction to electronic filing in the Superior Court in Maricopa County. Learn how to register and do a basic filing in the Clerk of Court's system, how to view documents remotely, and learn the future of e-Filing in Arizona. Lawyers and legal support staff are encouraged to attend.

PRESENTERS:

Michael K. Jeanes, Clerk of the Superior Court
 Aaron Nash, Programs Manager

SPONSORED BY: Public Lawyers Division

- COST:**
- PL Division member: \$47.50
 - MCBA member: \$55
 - Non-student member: \$85
 - Law student member: \$10

THURSDAY ■ JUNE 18
4-5 P.M.

Why Superman and Copyright Matter to You

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

Get answers to these questions:

- Why trust and estate lawyers need to know copyright law fundamentals before crafting estate plans
- Why copyright reversion can generate a massive transfer of wealth to clients
- Why trust and estate lawyers are on the front lines of copyright reversion
- Why copyright reversion will explode in importance

PRESENTER:

Chris Ardledge, Turner Green Afrasiabi & Ardledge, LLP

SPONSORED BY: Estate Planning & Trust Section

- COST:**
- EPT section member: \$25
 - MCBA member: \$30
 - Non-member: \$50
 - Law student member: No charge

FRIDAY ■ JUNE 26
12-1 P.M. (Lunch included)

A New Dawn for Organized Labor: EFCA, Policy Changes and Aggressive Union Organizing

1 credit hour

LOCATION:

2001 N. 3rd Street, Suite 204; park in the MCBA building lot

This program for lawyers familiar with labor issues looks ahead to the likely impact of proposals such as the Employee Free Choice Act (EFCA), recent policy reversals from the new President to support organized labor, and stepped up union organizing. Employers should be prepared for new challenges in defending against both organizing and unfair labor practice allegations.

PRESENTER: Robert J. Deeny, Sherman and Howard, LLC

SPONSORED BY: Corporate Counsel Division

- COST:**
- CCD member: \$35
 - MCBA member: \$40
 - Non-smember: \$60
 - Law student member: \$10

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Please mark boxes under CLE programs to indicate which classes you wish to attend.

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 Phoenix, AZ 85004

ONLINE: www.maricopabar.org

FAX: Credit card payment to: Jennifer Deckert, (602) 682-8601

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- **LATE REGISTRATION:** All registrations not paid in full and in advance by the day of the program will be assessed a \$15 fee. You may register at the door if space is available; the late fee will apply. If you do not register at least two business days in advance of a program, MCBA cannot guarantee space or availability of materials.
- **CANCELLATIONS:** Refunds, less a \$10 fee, will be issued only if the CLE department receives your cancellation, in writing, at least two business days prior to the program.
- **NO SHOWS:** If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio tapes are available, registrations may be converted to a self-study package for an additional \$15 charge.
- **SPECIAL ACCOMMODATION:** If you have a disability, please call ahead so we can accommodate your needs.

'Final Bits' of Opinions Dealing with '94 Notice-of-Claim Statute Amendments

continued from page 1

must be given an opportunity to exclude themselves from the class." Furthermore, "[n]o settlement binds remaining class members until approved by the trial court after appropriate notice and hearing."

"Thus," Hurwitz continued, "it is simply not possible for those filing a purported class claim under the notice of claim statute to set forth a 'specific amount' for which the claim of the *entire* class 'can be settled,' as required by § 12-821.01(A)."

He explained: "Not only do those filing the claim lack any such authority, they also have no assurance that a class will ever be certified, how many members of the class will opt out, or whether the superior court will eventually approve a proposed settlement."

Thus, Hurwitz rejected the defendants' argument that putative class representatives' notices of claim must include a settlement amount for the class. "The initial difficulty with this argument," he wrote, "is that such a demand would not comply with the language of the statute, which requires that the notice include 'a specific amount for which the claim can be settled.'"

"At best," he continued, "the approach suggested by the [defendants] would result in a notice including a sum for which the class claims *might* be settled if a class is eventually certified."

But Hurwitz also rejected the plaintiffs' argument that they were excused from stating

any settlement amount. "The statute," he noted, "applies to 'all causes of action'; there is no exemption for putative class claims."

"The legislature," he concluded, "has the ultimate authority to regulate claims against public entities, and we are not free to ignore the language of the statute it has enacted. Some form of settlement demand for a sum certain is required by § 12-821.01(A)."

Hurwitz and the court therefore held that "a putative class representative [must] include in his notice of claim a 'specific amount' for which his individual claim can be settled." He went on: "A class claim meets the settlement demand requirement of § 12-821.01(A) if it identifies the amount for which an individual putative class representative would settle his own claim and puts the governmental entity on notice of the claimant's intention to pursue a class action if his claim does not settle."

But the plaintiffs' failure to state any sum did not doom their claim. Hurwitz concluded that the defendants had waived the notice-of-claim defense by their failure to raise it earlier in the litigation.

"Given that a government entity may entirely avoid litigating the merits of a claim with a successful notice of claim statute defense, waiver of that defense should be found when the defendant 'has taken substantial action to litigate the merits of the claim that would not have been necessary had the entity promptly raised the defense'" he wrote, quoting *Jones v. Cochise*

County, 218 Ariz. 372, 187 P.3d 97 (App. 2008).

Hurwitz held that "[b]y any measure," the defendants had "substantially participated in this litigation before raising their notice of claim statute defenses, having extensively briefed the propriety of class certification" and having "filed various motions, including several motions for partial summary judgment unrelated to the sufficiency of the notices of claim."

He also pointed out that they had engaged in discovery and disclosure—without mentioning the notice-of-claim statute—after the class had been certified. They didn't assert the notice-of-claim defense until "more than four years after the date of the original complaint and more than three years after class certification."

Concluding that the defendants had waived the defense, the court vacated the court of appeals' opinion and remanded the case back to the superior court.

Backus v. State

The notice-of-claim statute's requirement that claimants state "the facts supporting [the] amount" for which a claim can be settled is satisfied by providing whatever information the claimants believe the public entity requires to evaluate the demand. That was the supreme court's holding in *Backus v. State*, No. CV-08-0284-PR (Ariz. Mar. 19, 2009).

The opinion grew out of two wrongful-death claims arising after inmates had died in prison. The attorney for Shannon Backus filed a notice of claim after her father, Gerald Dunford, died in prison. After describing the circumstances establishing the state's potential liability, the notice stated:

"As he was born on January 15, 1947, Gerald Michael Dunford was only fifty-eight years old at the time of his death. According to the mortality tables, a person between the ages of 58 and 59 has a life expectancy of 23.6 years. For the sole purpose of putting a damage amount on the life of Gerald Dunford, Mrs. Backus is claiming \$21,500 per year for the loss of her father. At 23.6 years, this is a total of \$507,400." For this, Backus demanded the amount of \$500,000.

Another inmate, Vickie Johnson, also died in prison. An attorney for her mother, Rosemary Johnson, filed a notice of claim alleging that the state was responsible for her death. It stated:

"Had Ms. Johnson received the proper medical care she needed, her death and needless suffering would have been avoided. Ms. Johnson was scheduled to be released from custody in just a few short months, and leaves behind six (6) children[.]

"This Notice of Claim is for the wrongful death of Vickie Johnson, caused by the negligence of the Arizona Department of Corrections and its medical providers. I have been given authority by the statutory beneficiaries of Ms. Johnson to resolve this matter in the amount of \$2,000,000.00."

The superior court dismissed both cases, ruling that the plaintiffs had not complied with the statute's supporting-facts requirement. The court of appeals consolidated the appeals and reversed, holding that the supporting-facts requirement is satisfied when claimants present

"any facts to support the proposed settlement amounts, regardless of how meager." *Backus v. State*, 534 Ariz. Adv. Rep. 26 (App. July 17, 2008). Although the supreme court vacated the court of appeals' opinion, it did not change its result.

Writing for a unanimous court, Chief Justice Ruth V. McGregor first found the phrase "the facts supporting [the] amount" demanded in settlement to be neither clear nor unequivocal and therefore set about interpreting it. She noted that *Deer Valley* had required claimants to "explain the amounts identified in the claim by providing the government entity with a factual foundation to permit the entity to evaluate the amount claimed."

"In other words," she wrote, "a claimant must explain not only the facts forming the basis of alleged liability, but also the specific amount requested and the facts supporting that amount."

"Armed with that information," McGregor stated, "the public entity can decide whether and how to investigate the claim, at what level of damages to attempt to resolve the claim, and how to take the claim into account in planning and budgeting activities." But this exposition did not provide the necessary standard for measuring a notice of claim.

Difficulties inherent in the process led McGregor to reject adopting a stringent standard. "The combination of the relatively short time within which a claimant must file a notice of claim and bring a civil action, coupled with a claimant's lack of knowledge about what facts a public entity will regard as sufficient in a particular case, results in the distinct possibility that a claimant will lose the right to bring an action against a public entity, even when his claim is justified."

"Because the legislature intended that liability of public entities be the rule and immunity the exception," McGregor continued, "it could not have intended to erect this significant and unpredictable obstacle to claimants' actions against public entities."

McGregor was also concerned that, even if the trial court were to eventually reject the public entity's defense, "all parties may have been exposed to considerable expense and delay in resolving the satellite litigation." This was—she wrote—contrary to the legislative intent "which is to encourage public entities and claimants to resolve claims without resorting to litigation."

McGregor rejected the state's argument for a higher standard. She noted that the statute has an explicit sufficiency standard for the facts supporting the claimed liability but has no such requirement in the facts supporting the settlement demand. "If the legislature had intended to require that a notice contain facts 'sufficient' to support the amount claimed," she wrote, "it would have said so."

Holding that both claimants had complied with the statute by providing the state with the facts that they, the claimants, believe were necessary to evaluate the claims, McGregor and the court remanded the cases to the superior court for further proceedings. ■

Editor's note: Daniel P. Schaack, an assistant Arizona attorney general, represented the State of Arizona in *Backus v. State*.

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YLD Domestic Violence Committee Introduces CLE and LAWS Program

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bench as the Hon. Dean M. Fink provides tips for advocating for your client and proving the alleged domestic violence. Nicole Siqueiros, Esq., a member of the board of directors for the MCBA Family Law Section, will discuss the causes and effects of domestic violence. Lastly, Lydia Peirce, Esq., who currently leads an animal advocacy group, will discuss the dynamics of a victim leaving an abusive relationship when companion animals are involved. Attendees will also receive insight from domestic violence survivors.

To directly assist female victims of domestic violence, the committee has developed a new program entitled "Legal Assistance to Women in Shelters" (LAWS Program). The goal of the LAWS Program is to provide education, resources and tips to

victims of domestic violence to familiarize them with the legal process from starting a case to the final trial. The concept for the LAWS Program was developed by Satterlee and consists of a series of three one-hour legal seminars presented at the shelters.

The first session will focus on procedural aspects of the law, including an introduction to the courts, and explain how to file and/or respond to a complaint, courtroom etiquette and the appellate process. The second and third sessions, depending on the needs of the particular shelter, will focus on one or more of the following substantive areas of law: 1. family law, including child custody and support, and orders of protection; 2. bankruptcy, foreclosures and creditor issues; 3. immigration; and 4. the Violence Against Women Act.

All of the sessions will be limited to providing information and will not offer actual legal advice to the attendees. The sessions will be free and the participants will receive handouts of the presentations, points of law, and a list of resources.

Each session will be presented by at least two attorney volunteers who will be given prepared materials for the session in advance to become familiar with them before the presentation. Volunteers are also strongly recommended to attend the domestic violence CLE on May 28.

The committee will kick off the LAWS Program during the month of June—just before the dust storm reduces visibility of the YLD (kidding). This program will not be a success if we do not have lawyers like YOU

(yes, you Mr. Incredible or Ms. Elastigirl) to volunteer. Therefore, it is so vital that you help YLD help the victims of domestic violence by volunteering to present one of the topics at a shelter.

Often times, ORDINARY, non-family law practitioners have limited ability to offer legal aid to domestic violence victims. However, the LAWS Program gives you SUPER POWER to present familiar legal information (and/or SUPER COURAGE to become familiar with basic principles of another practice area) to provide direct aid to victims of domestic violence.

If you are bold enough to risk revealing your secret identity as "attorney volunteer," YLD's LAWS Program is for you. Please contact Satterlee at l.satterlee@nrglaw.net or (480) 961-5900 to get involved (but just remember to wear your super suit made by none other than E-D-N-A Mode). ■

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